

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b)) MB Docket No. 03-238
Table of Allotments,) RM-10820
FM Broadcast Stations)
(Lancaster and Pickerington, Ohio))

To: Assistant Chief, Audio Division, Media Bureau

MOTION TO ACCEPT
SUR-REPLY OF FRANKLIN COMMUNICATIONS, INC.
TO
REPLY COMMENTS

Franklin Communications, Inc. ("Franklin"), licensee of Station WJZA, Channel 278A, Lancaster, Ohio, respectfully moves the Assistant Chief, Media Bureau, to accept its concurrently-filed Sur-Reply to the Reply Comments filed January 30, 2004, by North American Broadcasting Co., Inc. ("North American") on the *Notice of Proposed Rule Making*, DA 03-3648, released November 17, 2003 ("NPRM") that proposes to (a) reallocate Channel 278A from Lancaster, Ohio, to Pickerington, Ohio and (b) modify the WJZA license to specify operation on Channel 278A at Pickerington, Ohio.

The Commission should consider Franklin's Sur-Reply on the merits in this proceeding as a matter of due process pursuant to its discretion under Section 1.415(d) of the Commission's Rules. In its Sur-Reply, Franklin addresses *new matters* that have arisen since January 30, 2004, the date on which reply comments were due in this docket. Specifically, North American on February 5, 2004, filed a *Petition for Reconsideration* of the dismissal of a minor change application (File No. BPH-20011221AAQ) to the

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facilities of its station WEGE, Westerville, Ohio, while a mutually-exclusive conflicting application (File No. BPH-20040108ALM) is pending. Not only is North American seeking a waiver for the acceptance of BPH-20040198ALM, it is trying to reinstate a mutually-exclusive application which cannot be granted. That is a violation of Sections 73.3517 and 73.3519 of the Rules. The purpose of North American's Petition for Reconsideration is to introduce delay into these proceedings which is an abuse of the Commission's processes, which should be brought to the Commission's attention in this docket. Additionally, Franklin takes this opportunity to comment on cases cited by North American in its Reply which should be distinguished. In connection with the above, the following is shown:

Good cause having been shown, Franklin respectfully requests the Assistant Chief, Audio Division, to accept and consider the arguments made in Franklin's Sur-Reply.

FRANKLIN COMMUNICATIONS, INC.

By: 

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for Its Counsel

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February 18, 2004

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, hereby certify that copies of the foregoing Motion to Accept Sur-Reply to Reply Comments were this 18th day of February, 2004, sent via First Class Mail, postage pre-paid (or by hand delivery, if so indicated), to the following:


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